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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
9673034, 567	01/03/95	WIEDECKMANN	R PTO-40887/1207

BAYER CORPORATION
PATENT DEPARTMENT
100 BAYER ROAD
PITTSBURGH PA 15205-9741

12M1/0206

 EXAMINER

COONEY, J

 ART UNIT

1207

 PAPER NUMBER

14

DATE MAILED: 02/06/97

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UNITED STATES DEPARTMENT OF COMMERCE

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Paper No. 14

Application Number: 08-362,547

Filing Date: January 3, 1995

Appellant(s): Wiedermann et al.

N. Denise Brown

For Appellant

EXAMINER'S ANSWER

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This is in response to appellant's brief on appeal filed July 8, 1996.

(1) *Real Party in Interest*

A statement identifying the real party in interest is contained in the brief.

(2) *Related Appeals and Interferences*

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

(3) *Status of Claims*

The statement of the status of the claims contained in the brief is correct.

(4) *Status of Amendments After Final*

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

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(5) *Summary of Invention*

The summary of invention contained in the brief is correct.

(6) *Issues*

The appellant's statement of the issues in the brief is correct.

(7) *Grouping of Claims*

The rejection of claims 3-9 stand or fall together because appellant's brief does not include a statement that this grouping of claims does not stand or fall together and reasons in support thereof. See 37 CFR 1.192(c)(7).

(8) *ClaimsAppealed*

The copy of the appealed claims contained in the Appendix to the brief is correct.

(9) *Prior Art of Record*

The following is a listing of the prior art of record relied upon in the rejection of claims under appeal.

5,096,933

Volkert

3-1995

(10) New Prior Art

No new prior art has been applied in this examiner's answer.

(11) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 3-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Volkert.

Volkert discloses processes for the production of rigid foams containing isocyanurate linkages prepared by mixing and reacting polyisocyanates, various 2 + hydroxyl group containing high molecular weight polyols, blowing agents-inclusive of alkanes alone or in conjunction with water, flameproofing agents, and chain extenders/crosslinkers (see the entire documents). Although the polyols of Volkert are not specifically described as being branched, it is held that such is an inherent property of the derived polyols of Volkert since Volkert utilizes similar initiators, such as trimethylolpropane, in the making of their polyether polyols.

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Volkert does differ from applicants' claims in that it does not particularly recite elevated NCO index values in the range of from 200 to 600. However, Volkert does set forth ranges of variation and selectivity in choosing the NCO contents for conducting the reactions of their concern, and it would have been obvious for one having ordinary skill in the art to have increased NCO indices in the processes of Volkert for the purpose of increasing the relative amount of isocyanate based material contained in the formed products in order to arrive at the products of appellants' claims in the absence of a showing of new or unexpected results.

(12) New Ground of Rejection

This examiner's answer does not contain any new ground of rejection.

(13) Response to argument

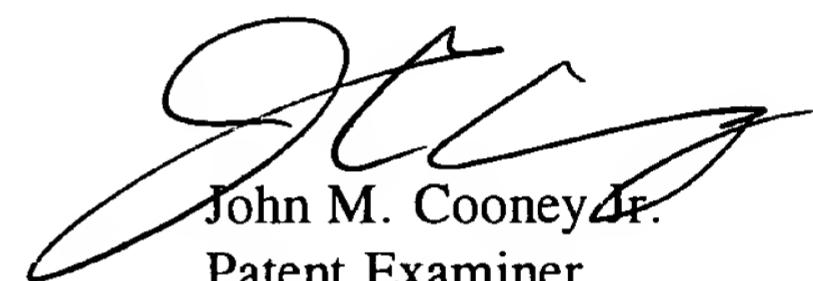
The rejections under 35 USC 112 set forth in the final Office action are hereby withdrawn in light of appellants' response after final. The rejection of appellants' claims under 35 USC 102 over Volkert ('933) is withdrawn as anticipation of appellants' claims is not evident. Rejection of applicants' claims under 35 USC 102/103 over Volkert ('534) and ('956) are withdrawn in light of applicants' remarks. However, the rejection of claims 3-9 under 35 USC 103 over Volkert ('933) is maintained. Appellants' arguments cite that there is no teaching in Volkert of how to increase flame retardance without reducing dimensional stability when the combination of alkanes and flameproofing agents are employed. However, appellants' have not demonstrated that the achievement of the recited effects are attributed to the increases in NCO indices to the levels recited in the claims. Although Volkert is not interested particularly in flame retardancy, its teaching of flame retardants can not be negated, and flame retardants quite expectedly do increase flame retardancy. The materials utilized in

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the processes of appellants' claims are well known to practitioners in the urethane synthesis art as demonstrated by Volkert's disclosure, and appellants' limited showing of stability and flame test do not identify results which are commensurate in scope with the full range of materials and respective amounts set forth by the claims.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,



John M. Cooney, Jr.
Patent Examiner
Group 1200

Bayer Corporation
100 Bayer Road
Pittsburgh, Pennsylvania
15205-9741